



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Viktoria-Schafer GmbH & Co., KG--Request for
Reconsideration
File: B-231392.2
Date: July 27, 1988

DIGEST

Dismissal of protest of fourth low offeror under a procurement in which price is the determining factor is affirmed where the protester would not be line for award even if the protest were sustained and, thus, is not an interested party eligible to pursue a protest against award to the low responsible offeror.

DECISION

Viktoria-Schafer GmbH & Co., KG requests reconsideration of our decision, Viktoria-Schafer GmbH & Co., KG, B-231392, June 22, 1988, 88-1 CPD ¶ , in which we dismissed its protest of an award to Frau Juliana Zschernig under request for proposals (RFP) No. DAJA37-88-R-0006, issued by the U.S. Army Contracting Command, Europe.^{1/} We dismissed the protest because we found that the protester, as the fourth low offeror, was not an interested party to protest the awardee's responsibility under a procurement in which price was the determining factor. In its request for reconsideration, Viktoria argues that the Army awarded a contract to Zschernig at a price higher than Viktoria's offer and that, therefore, Viktoria must have been in line for award.

We affirm the dismissal.

The RFP provided that award would be made on an all-or-none basis to the responsible offeror who submitted the most advantageous proposal to the government, price and other factors considered, but excluding the evaluation of

^{1/} The Army found the lowest offeror nonresponsible and made award to Zschernig, the second low offeror.

item 0002.2/ The RFP also provided that the government in evaluating offers for award would add the price of all options to the price for the basic requirement. The RFP did not contain technical criteria for comparative evaluation of the merits of proposals or contemplate the submission of technical proposals. Thus, the competition was based on price.

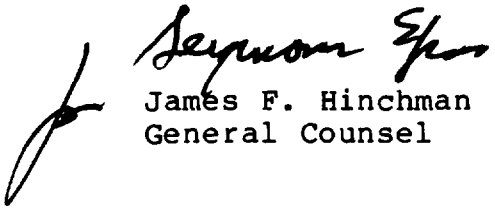
Viktorias argues that the award to Zschernig at a price higher than Viktoria's offer shows that Viktoria was in line for award and is an interested party. Viktoria's argument, however, is without merit. The RFP provided that while the price evaluation would not include offerors' prices for item 0002, any contract awarded under the RFP would include item 0002. The contract awarded to Zschernig was for items 0001 through 0005, including item 0002. Thus, although Zschernig's contract award was at a price higher than Viktoria's evaluated offer, this is only because it includes the price of an item for which the offers were not evaluated, in accordance with the stated RFP evaluation criteria.

We have reviewed the abstract of offers and the proposals of Viktoria, Zschernig and the third low offeror and find that Viktoria was not in line for award, and would not be in line for award even if Zschernig is nonresponsive, as Viktoria alleges. When the total price of all options is added to the total price for the basic requirement, excluding prices for item 0002, the offers of Zschernig and the third low offeror are both lower than Viktoria's offer. We also note that even if the Army had evaluated prices offered for item 0002 the relative standing offerors would not have changed.

2/ One of the warehouses that Zschernig proposed to use under the RFP is a warehouse in the Fulda Military District which Zschernig leased to the Army and which is currently used for storage under the prior drayage contract. Item 0002 is for the movement of government furniture from Zschernig's warehouse into the contractor's warehouse. While the record does not state the Army's purpose for not evaluating item 0002, presumably the Army did not evaluate this item in order to eliminate any competitive advantage Zschernig might have under the RFP.

Therefore, Viktoria is not an interested party to have its protest considered on the merits. Priscidon Enterprises, Inc., B-230035, Mar. 18, 1988, 88-1 CPD ¶ 290.

The dismissal is affirmed.



James F. Hinchman
General Counsel